



Neutral citation number: [2024] UKFTT 00860 (GRC)

Case Reference: FT/D/2024/0364

**First-tier Tribunal
(General Regulatory Chamber)
Transport**

**Heard by Cloud Video Platform
Heard on: 24th September 2024
Decision given on: 25 September 2024**

Before

JUDGE MOAN

Between

LOUISE ATKINS

Appellant

And

Driver and Vehicle Standards Agency

Respondent(s)

Representation:

For the Appellant: In person

For the Respondent: Ms Jackson

Decision: The appeal is dismissed and the Registrar's decision to refuse a further licence is confirmed with immediate effect.

REASONS

Decision under appeal and background

1. The Appellant had been granted a trainee licence between 10th October 2023 and 8th April 2024 under section 129 of the Road Traffic Act 1988. On 13th March 2024, the Appellant applied for a second trainee licence. That application was refused by the Respondent on 9th April 2024.

Appellant's written grounds of appeal

2. The Appellant appealed against the Respondent's refusal on a notice dated 17th April 2024. She said that she was seeking a further trainee licence because she had not been able to undertake the 20 hours training to pass the Part 3 test. Not being allowed a further trainee licence would put her and her two children in financial hardship. She also submitted that she was on a waiting list for her Part 3 test.
3. She was unable to be given sufficient instruction and was unable to find another school to give her instruction. The two-year period from passing Part 1 expires in March 2025 and she was aware that she would have to start the entire process again.
4. She said that not having a trainee licence made her insurance invalid to teach pupils.
5. An email from Mr Miah confirmed that she had not been able to undertake training to prepare for Part 3.

Respondent's written response to the appeal

6. The purpose of the provisions governing the issue of licences is to afford applicants the opportunity of giving instruction to members of the public whilst endeavouring to achieve registration. The system of issuing licences is not and must not be allowed to become an alternative to the system of registration.
7. The licence granted to applicants is not to enable the instructor to teach for however long it takes to pass the examinations, but to allow up to six months experience of instruction. This provides a very reasonable period in which to reach the qualifying standard in the examination and in particular, to obtain any necessary practical experience in tuition. Moreover, by virtue of the Appellant having applied for a second licence before the expiry date of the first, that licence has remained in force to the present time and will allow her to continue to give paid instruction until determination of the appeal.
8. Since passing her driving ability test, the Appellant has yet to take the instructional ability. Despite ample time and opportunity, the Appellant has not been able to reach the required standard for qualification as an Approved Driving Instructor.
9. The refusal of a second licence does not bar the Appellant from attempting the instructional ability test. She does not need to hold a licence for that purpose, nor is it essential for her to give professional tuition under licence in order to obtain further training. The Appellant could attend a training course, or study and practice with an Approved Driving Instructor or give tuition on her own (provided that she does not receive payment of any kind for this). These alternatives are used by some trainees who acquire registration without obtaining any licences at all.

10. The Appellant has not yet booked her first attempt at the instructional ability test.

Procedural matters relating to the determination of the appeal

11. The Tribunal considered the bundle (29 pages) prepared by the Respondent.

12. The hearing was attended by the Appellant and a representative for the Respondent.

13. The hearing took place remotely via video (CVP). There were no objections to this as a suitable method of hearing and no technical or other difficulties during the hearing.

14. I heard evidence from the Appellant and submissions from both parties.

Evidence and submissions

15. The Appellant said that she had been unable to undertake the training due to caring for her mother. She was a single parent who had invested in her licence. She had booked a Part 3 test which she completed last week although, disappointingly, she had failed. She told me that she had booked the test five months before it was scheduled. She now had to undertake a further five hours of tuition and had applied to re-take her test. A date for that test had not been given until she completed the extra five hours training.

16. She was asked why she had not undertaken any training between mid-January and mid-March 2024, she said that her instructor had no availability. She completed the Part 1 test in March 2023 and so was aware that her Part 3 test must be taken and passed before March 2025.
17. Ms Jackson asked her why she did not return her license if she was not using it as this would have positively influenced her application for renewal. The Appellant said that she did not know that she could do that and that her instructor had not told this either.
18. The Appellant said that she was not insured without a trainee licence and could not take the test again without a licence.
19. Ms Jackson submitted that the failure to comply with the training requirements upon renewal was the reason why the trainee licence was not renewed. She confirmed that there were commonly delays of 3 or 4 months in booking Part 3 tests, depending on the location of the test centre.

The Legal Framework

20. Part V of the Road Traffic Act 1988 makes detail provision about the provision of driving instruction for payment and the process of registration (on the Register of Approved Instructors). Section 123 of the Road Traffic Act 1988 prohibits anyone whose name is not on the Register of Approved Driving Instructors from giving paid driving lessons.
21. In order to qualify as an Approved Driving Instructor, applicants must pass the Qualifying Examination. This comprises: the written examination ('Part 1'); the

driving ability and fitness test ('Part 2'); and the instructional ability and fitness test ('Part 3').

22. Whilst a person may attempt the theory test Part 1 unlimited times; three attempts are permitted at each of Parts 2 and 3. The whole examination must be completed within 2 years of passing Part 1, failing which the whole examination had to be retaken.

23. A trainee who has passed Part 2 may apply for a trainee licence and the grant of a trainee licence enables applicants to provide instruction for payment before they are qualified. The circumstances in which trainee licences may be granted are set out in section 129 of the Act and the Motor Cars (Driving Instruction) Regulations 2005. The purpose of a trainee licence is to allow the trainee to get practical experience ahead of Part 3. It is not a prerequisite to hold a trainee licence before qualifying as an Approved Driving Instructor and there is nothing to prevent a trainee instructor practising their instructing ability without payment. Trainee licences are usually granted for six months.

24. In determining the appeal, the Tribunal stands in the shoes of the Registrar taking account of all of the information. The Appellant has the burden of showing that the Registrar's decision was wrong.

25. Under s131 of the 1988 Act the Tribunal may make such order as it considers fit.

Analysis of the evidence and findings on appeal

26. The process of getting a trainee licence is simplified by an online application process or booking by telephone. The Part 3 involves one hour of the trainee driving instructors time with about 40-45 of that being an observation of a lesson and some general questioning thereafter. It is not over-onerous in terms of expense and time commitment.

27. There should be no expectation that a trainee licence will be renewed. There should be some reason for a renewal and why the Part 3 test has not been successfully passed.

28. The Guidance on the Gov.Uk website provides -

Getting another trainee licence

You can apply for another trainee licence when it expires. You can do this if you feel you have not had the full benefit out of it. You'll need to give evidence to support the reason.

It's unlikely you'll get another licence just to give you more time to pass the ADI part 3 test.

Tell DVSA if you stop using your trainee licence. This will count in your favour if you need to apply for another licence.

The ADI Registrar has refused applications for another trainee licence when the applicant had not reasonably attempted the ADI part 3 test during the 6-month period covered by their previous licence.

This is clearly a statement of the government intent as regards trainee licences.

29. In her email to the DVSA dated January 2024, the Appellant had recognised that she was struggling with the training commitment but indicated that she would get cover for her caring commitments to assist her with undertaking lessons. She had not completed any training between mid-January and mid-March 2024 when the certificate of training had been signed off.
30. In her appeal notice, she said that Mr Miah did not have time to train her due to commitments with other students but had since set aside the time to train her
She said a refusal of a further trainee licence would result in financial hardship. When I asked at the hearing, she said that she had three students at the present time at that the lesson fee was just covering the costs.
31. There was little information from Mr Miah about when she had made requests to be trained and his availability; there was also no supporting information about the problems she experienced with her mother's health and why that precluded her from committing to the training and her test. The requirement to undertake 20 hours training in 6 months is not over-onerous.
32. If a licence is not being used, the advice of the DVSA is to apply for suspension and that would be considered on renewal. No suspension application had been made. The Appellant said that she did not know that she could do this although there is information on the website to this effect and importantly, that this would have been favourably considered on a renewal application.
33. Mr Miah's email dated 18th March 2024 said that he had not been able to train her and that she had some personal issues that had impacted on her training. As of 15th March 2024, she had undergone 12 hours of training with the last training take place on 17th January 2024. I did not have an up-to-date training

record to show when the training was undertaken but clearly she had undertaken the necessary hours to be able to take the Part 3 test.

34. The Appellant had failed her Part 3 approximately a week ago. Ms Jackson did not challenge the Appellant's assertion that she had waited five months for a test, Ms Jackson outlined that delays of 3 and 4 months were common. The test had likely been booked around March 2024.

35. Ms Jackson also confirmed that had the Appellant complied with the training requirements, it was likely that a second licence would have been granted. The effect of the appeal was that she had the ability to use her licence as if it were granted and she has had the benefit of extra time to train and book her test. It is unfortunate that the delays for tests are so long that candidates do not get the opportunity to re-take the test within the period of their initial trainee licence. This is no doubt why the DVSA have been taking a sympathetic approach so long as all of the training requirements have been met.

36. Ultimately the situation has been compounded by the Appellant not undertaking the training and the delay in applying for her first test. It is expected that this should happen within the first licence of six months, if indeed outside the constraints of a trainee licence. The Appellant has had just short of one year to take the test, which is the equivalent of two licences. The urgency is further exasperated by the Appellant's slow progress which has resulted in an ultimate deadline for the Part 3 test within the next six months to comply with the requirement to pass all three tests within two years of the passing of Part 1.

37. A better approach would have been to return her licence when she was not able to undergo training and give lessons. She would have got the benefit of a few more months and then likely a renewal. The information about returning a licence is on the website. It is not an acceptable explanation to say that no-one told her about doing that.

38. A licence is not required to pass Part 3. Whilst she may have difficulties with her own insurance on her own vehicle, she could pass Part 3 in her instructor's vehicle. Many people pass Part 3 without a trainee licence in place at all and so this is possible.

39. The Regulator's own guidance states that a licence will not be granted for more time to pass Part 3. She did not return her licence to get the benefit of that factor in her favour. She is in no worse position had she been granted a second licence with the passage of time since her appeal, so in reality, this appeal is akin to a third licence application in terms of time spent on a trainee licence.

40. The Appellant does not have the right to have a trainee licence granted to undertake three attempts at Part 3. In reality, she should have made two attempts at least during the last 12 months even taking into account the delay in getting a test. The delay of the Appellant in booking her Part 3 was a matter in her own hands. She can take the test again without a trainee licence.

41. The Appellant's application for a further licence (and the circumstances that led to that) have to be balanced against the weighty public interest in ensuring that trainees who are not meeting the required standards are not allowed to

continue to provide instruction for payment for inordinate periods of time or that trainee instructors are avoiding the proper process for registration.

42. The Appellant has failed to demonstrate why a further licence should be granted. For those reasons, the appeal is refused.

District Judge Moan sitting as a First Tier Tribunal Judge

24th September 2024